Supreme Court, U.S.
FILED

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No. -_____

OFFICE OF THE CLERK

In The

Supreme Court Of The United States

PAUL MOLNAR

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

Respondents.

Petition For A Writ Of Certiorari To The Supreme Court of the State of California

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PETITION FOR WRIT OF CERTIORARI

PAUL MOLNAR
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Petitioner in Propria Persona

21 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the rulings of the Court of Appeal and Supreme Court of the State of California erroneously validated the denial of Due Process and the fundamental right to jury trial in the action brought by Petitioner against Respondents.

2. Whether litigants in propria persona may be arbitrarily deprived of access to a fair hearing before a jury, as expressly provided for in the Constitution, because of their unrepresented status.

PARTIES TO THE PROCEEDINGS

The Petitioner is Paul Molnar. Petitioner is the Plaintiff/Appellant in lower court proceedings. Petitioner is an individual and, thus, there are no disclosures to be made pursuant to Supreme Court Rule 29.6. Respondents are the Regents of the University of California and several named employees of the University (Vert Mooney, M.D., Thomas Altisuse, Joseph Corduan, Michael Melman, Daniel Wyman, Does I-XXV) who were the Defendants/Respondents in lower court proceedings.

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OPINIONS BELOW

The order of the Supreme Court of California denying Petitioner's review without opinion is included herein at the Appendix, page 1.

STATEMENT OF JURISDICTION

The California Supreme Court entered its judgment below on March 28, 2001 (Appendix, page 1). The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

TEXT OF STATUTES/CONSTITUTIONAL PROVISIONS CITED

"No person shall...be deprived of life, liberty or property, without due process of law...."

United States Constitution, Amendment XIV.

"No states hall make or enforce any law which shall abridge the privileges or immunities of citizen of the

United States; nor shall any state deprive any person of life, liberty, or property, without due process of law...."

United States Constitution, Amendment XIV

> ". . . trial by jury in an inviolate right and shall be secured to all. . . ."

California Constitution, Article I, Section 16.

> "When the answer pleads that the action is barred by the statute of limitations . . . or sets up any other defense not involving the merits of the plaintiff's cause of action . . . the court may, upon motion of either party, proceed to the (non-jury) trial of such special defense or defenses before the trial of any other issue in the case. . . ."

California Code of Civil Procedures, Section 597.

STATEMENT OF THE CASE

This case originated in the Superior Court for the County of San Diego, State of California, in which Petitioner filed two separate, and later consolidated, actions against the Regents of the University of California and named employees and agents. The first lawsuit alleged that over a period of over two years, Petitioner had been subjected to no less than thirty (30) malicious and

deliberate "disciplinary actions" by the Defendants at Petitioner's place of employment with the University (San Diego Marine Facility of the Scripps Institute of Oceanography). It was alleged that these disciplinary actions, which ranged from false assertions of employee incompetence to suspensions without pay, were motivated by ethnic discrimination (Petitioner is a Czechoslovakian emigre) and retaliation for presuming to file grievances related to malicious and unwarranted disciplinary actions, including retaliation for whistle-blowing. During the course of this campaign of harassment and retaliation, defendant alleged that he had suffered a collapse on the job, and an ensuing six-month period of disability, which the University's own doctors attributed to job harassment. On the day Petitioner returned from that period of disability, he was suspended without pay for two weeks on the basis of a false and fraudulent claim of incompetence on the job.

Petitioner's second lawsuit was based upon the contention that he had been wrongfully terminated during the pendency of the first action, on the basis of a completely false and fraudulent allegation of total and permanent physical disability, precluding Petitioner's continued employment by the University. This false and fraudulent claim of total disability was based upon the diagnosis of a University doctor who failed to physically examine Petitioner prior to his findings, and who had prepared a fraudulent diagnosis after receiving a memorandum from management suggesting that he find Petitioner totally disabled. It was noted in state proceedings that the University had filed an action before California

Worker's Compensation Appeals Board with respect to the claimed disability, and had received a ruling that Petitioner was suffering from zero physical disability. Petitioner alleged that his wrongful and fraudulent termination arose from discriminatory and retaliatory motives, because Petitioner had filed the first lawsuit, had complained to state agencies regarding unlawful employment practices initiated against him, and had complained of ethnic discrimination in the work place. All of Petitioner's causes of action in both lawsuits rested upon violations of California labor statutes, and common law theories of tortious conduct, such as fraud, defamation, and intentional infliction of emotional distress.

During extensive pretrial proceedings by way of demurrer and attempted summary judgment, Respondents argued that Petitioner's termination action was barred because Petitioner had failed to exhaust administrative remedies available from the employer prior to filing suit. On both demurrer and summary judgment, the Court ruled that Petitioner had adequately pled, and factually defended, the claim of excuse from administrative exhaustion under California law which recognizes four such exceptions: (1) when the subject of the controversy lies outside the agency (employer) jurisdiction, (2) when pursuit of an administrative remedy would result in irreparable harm, (3) when the agency (employer) cannot grant an adequate remedy, and (4) when the agency ruling is a "foregone conclusion." All of these pled excuses from administrative exhaustion survived Respondent's attacks as the case proceeded to trial.

On the eve of trial, Respondents moved the Court to conduct a non-jury trial of claimed defenses to the action, pursuant to California Code of Civil Procedure Section 597. That statute states, in pertinent part:

> "When the answer pleads that the action is barred by the statute of limitations...or sets up any other defense not involving the merits of the plaintiff's cause of action....the court may, upon the motion of either party, proceed to the (non-jury) trial of such special defense or defenses before the trial of any other issue in the case...."

In the instant case, over Petitioner's objections, Respondents sought, and obtained, a non-jury trial on the alleged defense of collateral estoppel with respect to the wrongful termination action. That defense rested, in turn, upon the assertion that Petitioner had failed to attend a "final" arbitration hearing within the University administrative process, that the hearing officer therein had found against Petitioner on the wrongful termination claim, and Petitioner had failed to pursue a writ of mandamus prior to suit, as allegedly required by California law.

At trial, and in all later appellate proceedings, Petitioner argued that the subject statute was improperly applied, and resulted in the erroneous deprivation of jury trial, because the claimed administrative hearing occurred after the trial court had already ruled that Petitioner had

properly pled the claim of excuse from any further administrative proceedings on the termination, and thus was excused from all further administrative proceedings. The very existence of the court's ruling on demurrer demonstrated that Petitioner was not required to attend the subsequent futile administrative hearing, nor was Petitioner required to file a pre-lawsuit writ. Stated differently, where a court rules that the litigant has pled facts excusing further participation in an administrative process, no further recourse to that process (including writ review of that process) is legally required. The litigant would further assume that he will be given the opportunity to prove the facts constituting excuse before a jury of his peers. This Petitioner was arbitrarily and unconstitutionally denied that right. Moreover, Petitioner asserted that in order to defeat the claim of collateral estoppel, and to demonstrate the existence of excuse, he would be required to put on virtually his entire case and proof of the entire course of malicious and discriminatory acts undertaken by the Respondents. As a consequence, Petitioner asserted that the non-jury trial foisted upon him necessarily "involved the merits" of his lawsuit, in violation of the terms of Section 597. That is, Petitioner was deprived of his constitutional right to jury trial under Article I, Section 16 of the California Constitution on the basis of a legally and factually erroneous application of a state statute. Pertinent California authority clearly holds that the non-jury proceeding contemplated by Code of Civil Procedure Section 597 is not permissible where there exists "disputed issues of material fact." Cornette v. Dept. of Transportation, 80 Cal.App.4th 1239 (2000). The applicability of the

above referenced and recognized excuses from administrative finality was an issue completely dependent upon "disputed issues of material fact." In fact, in denying summary judgment, the trial court expressly ruled that the whole issue of administrative excuse rested upon disputed issues of material fact. Despite this reality, the trial court stripped defendant of his right to jury consideration of his case, and the Court of Appeal alidated this action while virtually ignoring the limitation expressed in Cornette, supra. Indeed, the entirety of the Court of Appeal opinion disclosed a failure by the court to consider and to address the relevant and controlling authorities cited by Petitioner. This failing was clearly presented to the California Supreme Court, and was summarily rejected for review.

In seeking review of this appellate determination by the California Supreme Court, Petitioner argued that he was erroneously denied jury trial and due process in the course of the litigation, and that this denial assumed constitutional dimension.

As a second, and distinct, claim of violation of constitutional right, Petitioner was totally deprived of a fair hearing within the Section 597 proceeding, when the trial court arbitrarily refused to admit evidence directly relevant to excuse from administrative finality, and any pre-termination evidence which demonstrated the malicious, discriminatory and retaliatory nature of the termination itself. The very evidence excluded at the Section 597 hearing was the admissible evidence upon which Petitioner had defeated Respondents' attempt at summary judgment.

As noted above, two consolidated cases were at issue, consisting of the action based upon a pattern of malicious and wrongful disciplinary actions, and the wrongful termination action, which was specifically alleged to be the"final act" of retaliation undertaken by Respondents. Despite this alleged linkage of conduct, the trial court barred Petitioner from producing three and one-half years of evidence related to events prior to the termination itself, which evidence was relevant and material to issues of futility in the administrative context, and the absence of jurisdiction or adequate remedy. For example, in depriving Petitioner of due process in this case, the trial court rejected Petitioner's admissible and material evidence regarding the Worker's Compensation proceedings referenced previously, and barred all proof of pre-termination malicious acts. In short, Petitioner was denied the fundamental due process right to present relevant evidence in his behalf at the Section 597 hearing. The state Court of Appeals failed to address this claim at all in its ruling.

Petitioner sought rehearing at the appellate level, and review by the California Supreme Court with respect to the above issues, and both tribunals rejected this request. On March 28, 2001, the Petition for Review by the California Supreme Court was summarily rejected. (Appendix, page 1).

REASONS FOR GRANTING THE WRIT

1. Decisions of the California Appellate and Supreme Courts Validated Fundamental Constitutional Error at the Trial Court Level:

Proceedings in the state courts as to Petitioner's consolidated actions are marred by error with respect to two of the most fundamental rights guaranteed by the United States Constitution -- the right to a jury trial and the right to due process set forth in the Fifth Amendment and Fourteenth Amendment. This Honorable Court has had occasion to rule that the due process provisions of the Federal Constitution exist "to restrain those arbitrary and unreasonable exertions of power (which) are so unreasonable and unjust as to impair or destroy fundamental rights." American Land Co. v. Zeiss, 219 U.S. 66 (1910).Article I, Section 16 of the California Constitution states that the"trial by jury is an inviolate right and shall be secured to all," in both criminal and civil cases. Under California law, the erroneous denial of a jury trial constitutes a per se ground for reversal of any ensuing judgment. Martin v. County of Los Angeles, 51 Cal. App.4th 688 (1996). In the instant case, the course of proceedings in the California state courts demonstrate that Petitioner was arbitrarily and unreasonably denied a fundamental right within the meaning of American Land Co., supra. A procedural statute, California Code of Civil Procedure Section 597, was utilized to totally non-suit Petitioner in a non-jury proceeding, against that statute's own proscription against its use where the issues involve

merits of the plaintiff's action, and state authority barring its use where disputed issues of material fact exist, as the trial court had found in summary judgment proceedings, with respect to the existence of excuses from administrative proceedings. Thus, this case constitutes a situation where a fundamental right was arbitrarily sacrificed to procedural convenience, and abuse of jurisdiction in the fair presentation of Petitioner's case.

The erroneous application of Section 597 in a factual context for which it was not designed, was compounded by fundamental due process error, when the trial court summarily excluded Petitioner's material and relevant evidence within the Section 597 hearing. A "fair hearing" and an "opportunity to be heard" are bedrock requirements of procedural due process. Galvan v. Press, 347 U.S. 522 (1954); Connell v. Shoemaker, 555 F.2d 483 (5th Cir. 1977). Neither the trial court nor the state appellate tribunals ever articulated a proper ground to eviscerate Petitioner's proof of continuing and long term malicious conduct (and administrative inaction thereon) as a backdrop to the claim of excuse from administrative finality. By virtue of this arbitrary and unreasonable denial of evidence production, the trial court simultaneously provided a basis to claim the absence of disputed material facts. It had been repeatedly argued, and accepted by the trial court, that the totality of wrongful conduct undertaken against Petitioner was at issue. That is, the wrongful and retaliatory pre-termination conduct formed the contextual setting for the claim of wrongful and retaliatory termination. These contentions were accepted by the trial

court in its denial of two demurrers and summary judgment prior to trial. Inexplicably, the trial court's acceptance of these contentions shifted 180 degrees when it came to the eve of trial. Nothing had changed in the previously articulated position of the parties. What actually occurred was that Petitioner's retained counsel arrived at trial totally unprepared to present Petitioner's case, as evidenced by counsel's query to Petitioner, in open court, as to what exhibits should be presented! Presumably, in recognition of his unpreparedness, counsel sought, and was granted, relief from further representation of the Petitioner. Petitioner then moved for a continuance of trial in light of these unfortunate circumstances, and that motion was denied. It was then that the perceptions of the trial court so radically changed, as Petitioner was forced to proceed to trial in propria persona, against his will. This change of perception led the trial court to strip Petitioner of his right to present relevant, material evidence. The Section 597 proceeding became a convenient vehicle for the Court to eliminate any possibility of a jury trial with a pro per plaintiff, by usurping the jury's function to settle disputed issues of material fact and the factual merits of Petitioner's case.

2. The Errors Raised Herein Merit This Honorable Court's Scrutiny:

Petitioner respectfully submits that the issues and claimed errors herein are matters of importance to the public at large, as well as Petitioner's personal interest. See Rice v. Sioux City Cemetery, 349 U.S. 70, 79 (1955). It is further submitted that the lower court rulings constitute a

gross miscarriage of justice with respect to constitutionally fundamental principles of due process and fair hearing.

By virtue of the rulings below, Petitioner was wholly non-suited in action respecting a patently fraudulent termination on total disability grounds, where the California State Worker's Compensation tribunal ultimately determined that Petitioner was subject to zero disability. That finding was obtained during University administrative termination proceedings and its import was ignored by the employer "remedy" system. Having determined to terminate Petitioner for total disability, the final insult ensued when the University denied disability benefits to Petitioner when its own Worker's Compensation proceeding yielded a zero disability result.

The trial court was well aware of these Worker's Compensation proceedings, and their result, when it non-suited Petitioner on a plainly arbitrary denial of a jury trial, and a specious determination that Petitioner's evidence of pre-termination wrongdoing was somehow irrelevant to the case. These rulings, on the very eve of jury trial, occurred after two years of protracted litigation, in which Petitioner successfully pled excuse from further interminable employer "proceedings" and had successfully demonstrated existence of disputed triable issues of material fact to forestall summary judgment. But when Petitioner presumed to represent himself at trial (against his will), his case somehow lost all merits as against a baseless claim of collateral estoppel, and his case never reached the hearing of a jury of his peers.

Every day across this nation, thousands upon thousands of citizens find themselves in courts in propria persona, often unwillingly, as in this case. It is commonly held that the pro per litigant is not entitled to special consideration in the presentation of his case. The reverse is also true, in that the unwilling pro per litigant should not be penalized for his status, particularly when retained counsel is permitted by the trial court to abandon the case. No new and startling evidence or theories, after two years of litigation, were proffered to the trial court as a basis of the non-suit herein. What had changed was the unfortunate prospect that the 56-year old Petitioner would have to proceed before a jury in pro per status. No trial judge could reasonably look forward to such a prospect, but that is no excuse to simply destroy the case with arbitrary deprivation of the right to a jury and the right to present relevant evidence. If nothing else, this case represents an opportunity to remind trial judges that the gutting of fundamental rights is not the "easy way out" when it comes to the pro per litigant. This Petitioner has suffered the destruction of a 17-year career at a prestigious educational institution, the destruction of his retirement benefits, and the destruction of employability in his chosen profession, by Respondents' willful, malicious and false assertion of total disability. The state courts failed Petitioner in the redress of this cruel and egregious wrong. All the Petitioner has ever sought in this case is his constitutional right to be heard by a jury on the merits. It is this necessity to preserve this right, for all citizens who seek redress from the courts, which constitutes the importance of this petition. The lower courts should not be permitted to strip a citizen

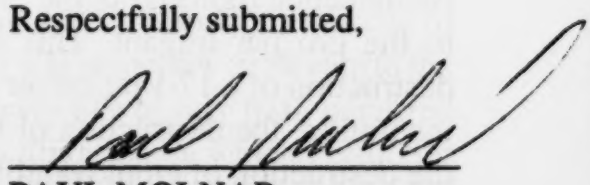
of access to justice on the arbitrary and unconscionable grounds revealed by this case.

Petitioner earnestly begs this Honorable Court's intervention and relief, and if given the opportunity for redress, Petitioner will also have the opportunity to insure that he is properly represented by competent and diligent counsel.

CONCLUSION

By virtue of the foregoing considerations, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted, with a view toward reversal and remand of the state appellate rulings which validated the non-suit of Petitioner as to the entirety of his wrongful termination action, and the consolidated action for pre-termination tortious conduct.

Date: August 17, 2001 Respectfully submitted,



PAUL MOLNAR
Petitioner in Propria Persona

APPENDIX A

APPENDIX A

COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION ONE - No. D033080
S094999

SUPREME COURT
FILED
MAR 28 2001
Frederick K. Ohlrich Clerk
Deputy

IN THE SUPREME COURT
OF CALIFORNIA

En Banc

PAUL MOLNAR
Plaintiff-Appellant,

v.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA, ET AL.
Defendants and Respondents.

Petition for review DENIED.

(George)
Chief Justice